STATE OF MICHIGAN

COURT OF APPEALS

HASTINGS MUTUAL INSURANCE, as Subrogee of JOHN LALONDE,

Plaintiff-Appellant,

v

GENERAL MOTORS CORPORATION and BOOKWALTER MOTORS SALES, INC.,

Defendants-Appellees.

UNPUBLISHED
March 29, 2005

No. 252427
Montcalm Circuit Court
LC No. 02-001265-CK

Before: Hoekstra, P.J., and Griffin and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendants on all claims. Plaintiff had filed a claim against defendants, the manufacturer and the seller of a 2000 Chevy truck owned by plaintiff's insured, John LaLonde, alleging manufacturing defect and breach of implied warranty in connection with a fire that destroyed the vehicle. We affirm.

Plaintiff first argues that the trial court erred in granting defendants' motion for summary disposition of plaintiff's claim of manufacturing defect. According to plaintiff, it met its burden of establishing that a genuine issue of material fact existed regarding whether the defect that led to the fire, an allegedly faulty valve cover gasket, could be attributed to defendants. We agree with plaintiff only as to those claims against defendant General Motors Corporation.

This Court reviews a trial court's grant or denial of summary disposition under a de novo standard. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Id.* Such a motion may be granted when:

> [e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. [MCR 2.116(C)(10).]

A motion for summary disposition based on the lack of a material factual dispute must be supported by documentary evidence. MCR 2.116(G)(3)(b); *Meyer v City of Center Line*, 242 Mich App 560, 574; 619 NW2d 182 (2000). The moving party must specifically identify the matters which have no disputed factual issues, MCR 2.116(G)(4); *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999), and has the initial burden of supporting his position by affidavits, depositions, admissions, or other documentary evidence, *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). The party opposing the motion then has the burden of showing by evidentiary materials that a genuine issue of disputed fact exists, *id.*, and that the disputed factual issue is material to the dispositive legal claims, *State Farm v Johnson*, 187 Mich App 264, 267; 466 NW2d 287 (1991). The court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party, *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999), and all reasonable inferences are to be drawn in favor of the nonmovant, *Hall v McRea Corp*, 238 Mich App 361, 369-370; 605 NW2d 354 (1999).

To maintain a manufacturing defect action, a plaintiff "'must prove a defect attributable to the manufacturer and causal connection between that defect and the injury or damage of which he complains.'" *Crews v General Motors Corp*, 400 Mich 208, 217; 253 NW2d 617 (1977), quoting *Piercefield v Remington Arms Co, Inc*, 375 Mich 85, 98-99; 133 NW2d 129 (1965). In moving for summary disposition of plaintiff's manufacturing defect claim, defendants challenged only the first of these two prongs. Specifically, defendants asserted that plaintiff could not demonstrate that there was a defect in the truck that was attributable to defendants. Plaintiff asserts that it submitted sufficient documentary evidence to permit the inference that the truck's valve cover gasket was defective. In *Holloway v General Motors Corp (On Rehearing)*, 403 Mich 614; 271 NW2d 777 (1978), our Supreme Court stated that "[w]here a failure [in an automobile] is caused by a defect in a relatively inaccessible part integral to the structure of the automobile not generally required to be repaired, replaced or maintained, it may be reasonable, absent misuse, to infer that the defect is attributable to the manufacturer." *Id.* at 624. Thus, in order to establish an inference that the alleged defect in the truck's valve gasket cover and survive defendant's motion for summary disposition under MCR 2.116(C)(10), plaintiff was required to establish a genuine issue of material fact regarding whether the valve gasket cover was (1) relatively inaccessible, (2) integral to the structure of the vehicle and (3) not generally required to be repaired, replaced or maintained. *Id.*

Plaintiff did not have direct evidence of a manufacture defect; hence, plaintiff sought to establish an inference of such a defect from circumstantial evidence in order to proceed to the trier of fact in this matter. However, our review of plaintiff's complaint coupled with plaintiff's expert witness testimony reveals that plaintiff failed to assert any of the three criteria essential to allow plaintiff to argue an inference from circumstantial evidence of a defective automobile part causing the fire. In ruling on this issue, the trial court found that, while the valve gasket cover was relatively inaccessible, it was not an integral part of the structure, and it was not a part not generally required to be repaired, replaced or maintained. Based on these findings, the court found that plaintiff had failed to meet its burden of proof. We hold that the trial court properly granted defendants' motion for summary disposition because plaintiff did not present sufficient evidence to establish a genuine issue of material fact regarding whether the valve cover gasket was integral to the structure of the vehicle and not generally required to be repaired, replaced or maintained under *Holloway*. Plaintiff presented no evidence whatsoever that the valve cover

gasket was a part that was integral to the structure of the truck or that it was not a part that was generally required to be repaired replaced or maintained. Because plaintiff presented no evidence that the gasket was in any way related to the truck's structure, much less that it was an integral part of that structure, plaintiff also failed to satisfy the second two elements of the *Holloway* test. Accordingly, plaintiff failed to meet its burden of demonstrating that a genuine issue of material fact existed as to whether the defective gasket was attributable to the manufacturer. *Id.* Therefore, the trial court correctly granted summary disposition to defendants in connection with plaintiff's manufacturing defect claim.

We further observe that, in connection with plaintiff's manufacturing defect claim against the non-manufacturing seller, there was a second ground upon which the trial court could have granted summary disposition based on MCL 600.2947. Under Michigan law, no action based merely on a manufacturing defect may lie against a non-manufacturing seller. MCL 600.2947, which concerns product liability actions, provides in pertinent part as follows:

> (6) In a product liability action, a seller other than a manufacturer is not liable for harm allegedly caused by the product unless either of the following is true:
>
> (a) The seller failed to exercise reasonable care, including breach of any implied warranty, with respect to the product and that failure was a proximate cause of the person's injuries.
>
> (b) The seller made an express warranty as to the product, the product failed to conform to the warranty, and the failure to conform to the warranty was a proximate cause of the person's harm.

The plain language MCL 600.2947 states that, in cases where a plaintiff brings a product liability action based on harm allegedly caused by a product, the only claims that may lie against a non-manufacturing seller are those based on a failure to exercise reasonable care and those based on breach of an express warranty. If the language of a statute is clear and unambiguous, no interpretation is necessary and the court must follow the clear wording of the statute. *American Alternative Ins Co, Inc v York*, 470 Mich 28, 30; 679 NW2d 306 (2004). The clear and unambiguous language of MCL 600.2947 precludes an ordinary manufacturing defect claim against a non-manufacturing seller because such a claim does not involve an allegation that the seller failed to exercise reasonable care or made an express warranty. Therefore, the trial court could have relied on MCL 600.2947 as an alternate basis to grant summary disposition in favor of the non-manufacturing seller.

Plaintiff also argues that the trial court erred in granting defendant's motion for summary disposition of plaintiff's breach of implied warranty claim because plaintiff met its burden of demonstrating that a genuine issue of material fact existed regarding whether the truck was not reasonably fit for its intended use and was, therefore, defective. Again, we disagree.

The burdens the parties were required to meet in connection with defendants' motion for summary disposition regarding plaintiff's breach of implied warranty claim remain the same as set forth above. Namely, defendants, as the moving party, bore the initial burden of identifying

those matters which had no disputed factual issues and supporting their position by documentary evidence. *Maiden*, *supra* at 120; *Smith*, *supra* at 455. Plaintiff then was required to show by evidentiary materials that a genuine issue of disputed fact existed. *Smith*, *supra* at 455.

Plaintiff's claim of breach of implied warranty requires the same proofs as its claim of manufacturing defect. *Kenkel v The Stanley Works*, 256 Mich App 548, 556; 665 NW2d 490 (2003). To survive defendants' motion for summary disposition, plaintiff must "'prove a defect attributable to the manufacturer and causal connection between the defect and the injury or damage of which he complains." *Id.*, quoting *Piercefield*, *supra* at 98-99. While defendants presented evidence sufficient to place before the court the question whether the defect that resulted in the fire was attributable to defendants, they did not present evidence sufficient to place before the court the question of whether a defect actually existed. Accordingly, in connection with this claim, just as in connection with plaintiff's manufacturing defect claim, in order to survive defendants' summary disposition motion, plaintiff was required to show only that a genuine issue of material fact existed regarding whether the defect was attributable to defendants. For the very same reasons that summary disposition in favor of both defendants was appropriate in connection with plaintiff's manufacturing defect claim, we find that summary disposition was also appropriate in connection with plaintiff's breach of implied warranty claim.

As we explained above, plaintiff could meet its burden of proof by showing that the defect was in "a relatively inaccessible part integral to the structure of the automobile not generally required to be repaired, replaced, or maintained." *Holloway*, *supra* at 624. However, as discussed above, plaintiff failed to meet its burden of proof as to the second and third elements of this test. Accordingly, plaintiff failed to meet its burden of demonstrating that a genuine issue of material fact exists as to whether the defective gasket was attributable to defendants. Therefore, the trial court did not err in granting summary disposition as to both defendants in connection with plaintiff's breach of implied warranty claim.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Stephen L. Borrello